91-149

(1)

Supreme Court, U.S.
FILED
JUL 18 1991
OFFICE OF THE CLERK

NO.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

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CLARENCE H. HOLDING, dba,
CLARENCE H. HOLDING & COMPANY, PETITIONER,

VS

SECURITIES DIVISION , SCC of
VIRGINIA, RESPONDENT.

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PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT of the UNITED STATES

---

PETITION FOR WRIT OF CERTIORARI

---

Clarence Houston Holding
CLARENCE HOUSTON HOLDING
ROUTE 1 BOX 2
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COUNSEL FOR PETITIONER

25

EDITOR'S NOTE:

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## QUESTIONS PRESENTED

1. DOES DISMISSING MR. HOLDING, S CASE FOR NOT FILING THE ASSIGNMENT OF ERRORS IN 10 DAYS THOUGH A MOTION FOR EXTENSION OF TIME WAS FILED BECAUSE OF CHEST PA INS, HOSPITALIZATION, CAR BREAK DOWN CONSTITUTE VIOL ATION OF THE CONSTITUTIONAL RIGHTS OF DUE PROCESS , FAIR TRIAL , EQUAL PROTECTION OF THE LAWS OF MR. HOLDING.

2. DOES THE JUDGES OF THE S.C.C. WHO RULE ON THEIR OWN AGENTS ALLEGATIONS SUCH AS SECURTIES DIVISION, CORPORATION ALLEGATIONS CONSTITUTE A VIOLATION OF THE CONSTITUTIONAL RIGHTS OF THE INDIVIDUAL AND CORPORATION OF DUE PROCESS AND FAIR TRIAL. WHEN THEY SHOULD BE SEPARA TE AND INDEPENDANT OF THE S.C.C.

3. DOES NOT PROVIDING A SPEEDY TRIAL AS IN THE HOLDING CASE CONSTITUTE A VIOLATION OF THE CONSTITUTIONAL RIGHTS UNDER THE 6th AMENDMENT WHOSE CASE WAS ADJUDICATED OVER 1 YEAR FROM THE INCEPTION OF ALLEGATIONS AND UNDER A TEMPORARY INJUNCTION. MR. HOLDING WAS UNABLE TO EARN A LIVING. AND VIOLATION OF DUE PROCESS RIGHTS.

4. DOES THE ORDER OF AUGUST 9, 1990 OF PERMANENT INJUNCTI ON AGAINST MR. HOLDING VIOLATE CONSTITUTIONAL RIGHTS UNDER THE EIGHT AMENDMENT AGAINST CRUEL AND UNUSAL PUNISHMENT WHICH PREVENTS MR. HOLDING FROM EARNING A LIVING AND ALSO VIOLATEB DUE PROCESS RIGHTS, OF 14th AMENDMENT.

5. IS THE CONSTITUTION RIGHTS OF MR. HOLDING DUE PROCESS OF 14th AMENDMENT BY THE SECURITIES DIVISION NOT PROVIDING THE NAMES OF WITNESSES WHAT THEY WOULD TESTIFY WHO MADE ALLEGATIONS OF WRONG DOING AGAINST MR. HOLDING SO MR. HOLDING WOULD KNOW WHO THEY WERE AND SO MR. HOLDING COULD DEPOSE THEM FOR HIS DEFENSE. VIOLATION ALSO OF FAIR TRIAL, EQUAL PROTECTION OF THE LAWS.

6. MOST IMPORTANT DOES JOHN PARTHUM INVESTIGATOR, LEWIS BROTHERS DIRECTOR AND OTHERS OF HIS STAFF HAVE A RIGHT TO HAVE MR. HOLDING ARRESTED AND CHARGED WITH A FELONY OF EMBEZZLEMENT WHEN MR. HOLDING WAS INNOCENT AS PROVED BY THE DECISION OF JUDGE HYDE OF THE GENERAL DISTRICT COURT OF ESSEX COUNTY ON JANUARY 11, 1990 NOT GUILTY. BROTHERS , PARTHUM , ZEIGLER OF THE SECURITIES DIVISION ARE CO CONSPIRATORS AGAINST MR. HOLDING . VIOLATION OF DUE PROCESS.

RULE 14 (b)

THE NAMES OF ALL PARTIES APPEAR IN THE CAPTION OF THE CASE.

## TABLE OF AUTHORITIES

PAGE

### CASES

APPLICABLE CASES THERETO

### RULES AND STATUTES

APPLICABLE RULES AND STATUTES AND AMENDMENTS

### OTHER SOURCES

UNITED STATES CONSTITUTION

CONSTITUTION AMENDMENTS

5th Amendment, right to know accusers, etc

6th AMENDMENT OF THE UNITED STATES CONSTITUTION

8th AMENDMENT OF THE UNITED STATES CONSTITUTION

14 th AMENDMENT OF THE UNITED STATES CONSTITUTION

## TABLE OF CONTENTS


| | PAGE |
|---|---|
| PETITION FOR WRIT OF CERTIORARI | 1 |
| I. QUESTIONS PRESENTED | i,ii |
| II. TABLE OF AUTHORITIES CITED | iiiii |
| III. OPINIONS BELOW | 1 |
| IV. JURISDICTION | 1,2 |
| JUDGMENTS SOUGHT TO BE REVIEWED | 3 |
| V. CONSTITUTIONAL PROVISIONS ENVOLVED | 3 |
| VI. STATEMENT OF FACTS | 3,4,5,6,7,8 |
| VII. REASONS FOR GRANTING THE WRIT | 8,9,10,11,12 |
| VIII. CONCLUSION | 12, 13 |
| IX. APPENDIX | A,B,C,D,E, F,G. |
| X. CERTIFICATE | 13. |

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES SUPREME COURT IN

WASHINGTON , D.C.

PETITIONER, CLARENCE H. HOLDING RESPECTFU LLY PRAYS IN THE INTEREST OF JUSTICE THAT A WRIT OF CERTIORARI BE ISSUED TO REVIEW THE JUDGMENT AND OPINIONS OF THE SUPREME COURT OF VIRGINIA AND THE JUDGMENTS AND OPINIONS OF THE S.C.C OF VIRGINIA . SUPREME COURT OF VIRGINIA DATED 1/31/91 REHEARING 4/19/91. S.C.C 8/9/90 , 8/27/90 REHEAR ING DENIED OF THE S.C.C.

## OPINIONS BELOW

THE OPINION OF THE SUPREME COURT OF VIRGINIA ON JANUARY 31,1991 , REHEARING ON APRIL 19,1991 ; S.C.C. OF VIRGINIA AUGUST 9,1990, REHEARING AUG UST 27,1991 DENIAL . APPENDIX A,B,C,D .

## JURISDICTION

RULE 10 CONSIDERATIONS GOVERNING REVIEW ON WRIT OF CERTIORARI.1 A REVIEW OF CERTIORARI ON WRIT IS NOT A MATTEROF RIGHT, BUT OF JUDICIAL DISCRETION. A PETITI ON FOR WRIT OF CERTIORARI WILL BE GRANTED ONLY WHEN THERE ARE SPECIAL AND IMPORTANT REASONS THEREOF. THE

FOLLOWING, WHILE NEITHER CONTROLLING NOR FULLY MEASURING THE COURT,S DISCRETION, INDICATE THE CHARACTER OF REASONS THAT WILL BE CONSIDERED :

(a) ..... ; OR HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDIN GS, OR SANCTIONED SUCH A DEPARTURE BY A LOWER COURT, AS TO CALL FOR AN EXERCISE OF THIS COURT,S POWER OF SUPERVISION .

(b) WHEN A STATE COURT OF LAST RESORT HAS DEC IDED A FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH THE DECISION OF ANOTHER STATE COURT OF LAST RESORT OR OF A UNITED STATES COURT OF APPEALS.

(c) WHEN A STATE COURT OR A UNITED STATES COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SET TLED BY THIS COURT, OR HAS DECIDED A FEDERAL QUES TIONEIN A WAY THAT CONFLICTS WITH APPLICABLE DEC ISIONS OF THIS COURT. MR. HOLDINGD PRAYS FOR JUSTICE AND DISCRETION OF COURT.

MR. HOLDING INVOKES ALL OF THE REASONS HERE FORE STIPULATED AND THE QUESTIONS FOR REVIEW ARE VALID AND IMPORTANT FOR THE JUSTICE OF INDIVIDUALS AND CORPORATIONS ALIKE AND TO PROTECT THE CONSTIT IONAL RIGHTS PROTECTED BY THE CONSTITUTION SO DEAR TO HUMANITY AND CIVILIZATION.STRONGLY (2) ABOVE.

JUDGMENTS SOUGHT TO BE REVIEWED

THE DATE OF THE ENTRY OF THE JUDGMENT OR DECREES SOUGHT TO BE REVIEWED ARE:

SUPREME COURT OF VIRGINIA JANUARY 31,1991
SUPREME COURT OF VIRGINIA APRIL 14,1991, RE HEARING. DENIED

S.C.C. AUGUST 9, 1990 /REHEARING
S.C.C. REHEARING AUGUST 27,1990 REARING DE NIDED .

THE STATUTE PROVISIONS AND ALL AMENDMENTS ARE RELIED ON.

THE CONSTITUTIONAL PROVISIONS ENVOLVED

1.14th AMENDMENT , DUE PROCESS, FAIR TRIAL , EQUAL PROTECTION OF THE LAWS . SET FORTH IN THE 1st QUESTION BEFORE THE COURT . IN APPEAL TO VIRGINIA STATE SUPREME COURT . SET FORTH IN THE S.C.C. LOWER COURT , NO2 OF QUESTIONS FOR REVIEW. NO. 3 OF QUESTIONS PRESENTED. NO. 4 OF QUESTIONS PRESENTED. NO. 5 OF QUESTIONS PRESENTED . NO. 6 OF QUESTIONS PRESENTED. 14th, 8th, 6th AMENDMENT SET FORTH IN THE BOTH THE SUPREME COURT OF VIRGINIA AND LOWER CT. SCC.

2. 6th AMENDMENT . QUESTION NO. 3 SPEEDY TRIAL.
4. 5th amendment right to know the accusers.
3. 8th AMENDMENT QUESTION PRESENTED IN no. 4. CRUEL AND UNUSAL PUNISHMENT.

CONCISE STATEMENT OF THE CASE AND FACTS.

FACTS MATERIAL TO THE CONSIDERATION OF THE QUES IONS PRESENTED ARE HEREBY SET FORTH : A REVIEW OF A JUDGMENT OF A STATE COURT IS SOUGHT, THE STATEMENT OF OF THE CASE WILL SPECIFY IN THE PROCEEDINGS, BOTH IN THE COURT OF FIRST INSTANCE AND IN THE APPELLATE COU RTS , AT WHICH THE FEDERAL QUESTIONS TO BE REVIEWED WERE RAISED; THE METHOD OR MANNER OF RAISING THEM

AND THE WAY IN WHICHTHEY WERE PASSED UPON BY THESE COURTS;AND SUCH PERTINENT QUOTATIONS OR SPECIFIC POR TIONS OF THE RECORD OR SUMMARY THEREOF, WITH SPECIFIC REFERENCE TO THE PLACE IN THE RECORD WHERE THE MATTER APPEARS(e.g., RULING ON EXCEPTION, PORTION OF COURT,S CHARGE AND EXCEPTION THERETO , ASSIGNMENT OF ERRORS) AS WILL SHOW THAT THE FEDERAL QUESTION WAS TIMELY AND PROPERLY RAISED SO AS TO GIVE THIS COURT JURISDICTION TO REVIEW THE JUDGMENT ON A WRIT OF CERTIORARI.

THE QUESTIONS PRESENTED SHOW THAT THE FEDERAL QUESTIONS WERE RAISED IN THE S.C.C. COURT , LOWER COURT , NO ACTION WAS TAKEN UPON RAISING THE FEDERAL QUESTIONS . THE QUESTIONS PRESENTED SHOW THAT THE FEDERAL QUESTIONS WERE RAISED IN THE SUPREME COURT OF VIRGINIA. NO ACTION WAS TAKEN BY THE SUPREME COURT OF VIRGINIA.

FACTS OF THE CASE

MR. HOLDING IS A MAN ALMOST 71 YEARS OLD. MR. HOL DING FOR THE PAST 43 YEARS HAS OWNED AND OPERATED A BROKERAGE SECURITIES FIRM IN VIRGINIA TO 1973 AND IN NORTH CAROLINA TO 1988. FOR THE PAST 35 YEARS MR. HOL DING HAS HAD SERVERE HEART TROUBLE .HAVING ONE HEART ATTACK AFTER ANOTHER .WITH NO IMPROVEMENT WITH MED ICATION AND FOLLOWING CLOSE DOCTORS CARE AND ADVICE.

OPEN HEART SURGERY BECAME AVAILABLE IN JULY 1977. MR. HOLDING HAD OPEN HEART SURGERY , BUT WITH NO SUCCESS . SUBSEQUENTLY 2 MORE OPEN HEART BYPASS SURGERIES WERE PERFORMED WITH NO IMPROVEMENT. FINALLY IN OCTOBER 1, 1987 A MIRACLE DRUG BECAME AVAILABLE PUT OUT BY MERCK COMPANY. IMPROVEMENT BEGAN IMMEDIATELY FROM AN INVALID TO PROMISE I WOULD LIVE. HALELOUYA.

INADVERTENTLY MR. HOLDING FORGOT TO RENEW HIS BROKERAGE FIRM LICENSES. MR. HOLDING FEELING A LITTLE BETTER DECIDED HE WOULD SEE SOME OF HIS OLD CLIENTS OF OVER 35 YEARS AND A FEW NEW ONES. THEY NEEDED HELP FOR THEIR FINANCIAL NEEDS SO I HELPED THEM.

SOME TIME IN SEPTEMBER 1989 JOHN W. PARTHUM BY AFFIDAVIT FALSELY MADE ALLEGATIONS I VIOLATED TWO SECTIONS OF THE CODE.

MR. HOLDING VIGOROUSLY OBJECTED TO THE ALLEGATIONS AND DENIED THEM, ASK FOR STRICT PROOF.

THE SCC ISSUED A TEMPORARY INJUNCTION /FOR 90 DAYS /BASED SOLELY UPON THE AFFIDAVIT OF JOHN W. PARHTUM , SENOIR SECURITIES INVESTIGATOR. MR. HOLDING OBJECTED AND MADE A MOTION TO LIFT THE ENJUNCTION . DENIED.

MR. HOLDING PREPONDED INTERROGATIVES AND DEMAND FOR DOCUMENTS. DENIED.

MR. HOLDING MADE A MOTION AND REQUEST FOR WIT NESSSES NAMES AND WHAT THEY MIGHT TESTIFY TO, DENIED .

/SION
SECURITIES DIVIS ASK FOR AND RECEIVED AN ENLARGEMENT OF THE INJUNCTION ON DECEMBER 12, 1989 UNTIL APRIL 1990, CLAIMED THEY WERE THEIR NOT COMPLETED/INVESTIGATION, MR. HOLDING OBJECTED. DENIED .

MR. HOLDING MADE SECOND REQUEST FOR NAMES OF WITNESSES , WHAT THEY WOULD TESTIFY ABOUT AND DOCUMENTS . AGAIN DENIED .

MR. HOLDING MADE MOTION AGAIN TO VACATE AND DISMISS THE TEMPORARY INJUNCTION. ON THE GROUNDS OF THE INTENTIONAL, FALSE FRAUDULENT ALLEGATIONS OF JOHN W. PARTHUM AND REFUSAL TO DELIVER THE NAMES OF THE WITNESSES AND TESTIMONY AND DOCUMENTS. DENIED.

MR. HOLDING MADE MOTION TO JUDGE PRESTON SHANN ON/TO VACATE AND DISMISS THE INJUNCTION. DENIED. /1/12/90

SCC SECURITIES DIVISION FILED MOTION TO SHOW CAUSE ON APRIL 17, 1990. HOLDING MADE RESPONSES DENYING THE ALLEGATIONS AND ASK FOR IMMEDIATE VACATE AND DISMISSAL OF THE INJUNCTION AND ALLEG ATIONS 7/12/90

MR. HOLDING OFFERED MUTUAL ACCORD. DENIED.

JOHN W. PARTHUM , LEWIS BROTHERS, MAX ZEIGLER HAD JOHN W. PARTHUM GO DOWN TO SHERIFF OFFICE ESSEX COUNTY AND COMMONWEALTH ATTORNEY ARREST ED MR. HOLDING FOR EMBEZZLEMENT OF $10,000 FROM MADELINE WATTS WHILE MR. HOLDING WAS IN THE HOSPITOL WITH CHEST PAINS AND HERNIA OPERATION, ON AUGUST 18, 1989 . THE CASE WAS DISMISSED BY JUDGE HYDE ON JANUARY 11, 1990. MR. HOLDING OBJECTED TO THE HARSH FALSE ALLEGATIONS AND FALSE ARREST. JOHN W.PARTHUM , LEWIS BROTHERS , THE DIRECTOR, MAX ZIEGLER ARE ALL CO CONSPIRATORS IN THE FALSE ARREST AND ALLEGATIONS.

MR. HOLDING RECEIVED THE NAMES OF WITNESSES AND WHAT THEY MAY TESTIFY ABOUT 12 DAYS BEFORE/B FINAL HEARING ON JULY 31, 1990. TO LATE TO DEPOSE THE SAID WITNESSES FOR MR. HOLDING,S DEFENSE.MR. HOLDING MADE MOTION TO CONTINUE TO GIVE HIM TIME TO DEPOSE THE WITNESSES . DENIED.

FINAL ORDER AUGUST 9, 1990 . HOLDING OBJECTED. DENIED , HOLDING MOTION FOR REHEARING AND RECONSIDERATION . DENIED BY SCC. 8/27/90.

HOLDING APPEAL NOTICE AUGUST 31, 1990.

APPEAL OF RIGHT WAS DENIED 1/31/91.

HOLDING MOTION FOR REHEARING . DENIED 4/16/91.

HOLDING GAVE NOTICE OF APPEAL APRIL 29,1991.

MR. HOLDING HAS OWNED A BROKERAGE SECURITIES FIRM FOR THE PAST 43 YEARS WITHOUT ANY COMPLAINTS FROM THE INVESTORS . ALL INVESTORS OF MR. HOLDING IN THAT TIME FRAME HAVE MADE HANDSOME PROFITS . NO ONE HAS LOST ANY MONEY IN THAT PERIOD. I THINK THAT IS AN EXCEPTIONAL RECORD FOR A BROKERAGE FIRM MR. HOLDING OWNED AND MANAGED.

AFFIDAVITS OF CLIENTS ARE IN THE FILE AS TO THE INTEGRITY, SINCERITY , HONESTY , KNOWLEDGE AND PROFESSIONAL SKILLS OF MR. HOLDING OVER THE YEARS.

MR. HOLDING HAS IMPECABLE INTEGRITY , CHARACTER , HONOR , DIGNITY, RESPECT FOR FELLOWMAN, CONSTANT DESIRE TO SERVE HUMANITY AND THEIR NEEDS, VERY DEDICATED TO HIS PROFESSIONAL LIFE IN FINANCE AND SECURITIES. HE IS A COLLEGE GRADUATE, LAW, GRADUATE WORK AND DEGREES IN ECONOMICS, SECURITY ANALYSIS, FINANCE, SECURITIES ETC.MR. HOLDING IS NON COMPROMISING IN EVERY RESPECT OR THING.

## REASONS FOR GRANTING OF THE WRIT

THIS CASE PROVIDES THIS COURT WITH AN OPPOR

TUNITY TO REVIEW THE DUE PROCESS , FAIR TRIAL, EQUAL PROTECTION DOCTRINE OF THE 14th AMENDMENT OF THE CONSTITUTION.

IN THE SUPREME COURT OF VIRGINIA DECISION OF APPEAL OF RIGHT, BECAUSE HOLDING WAS IN THE HOSPITAL WITH CHEST PAINS AND BROKEN DOWN CAR TRANSMISSION AND POWER STERRING, DISMISSED THE APPEAL OF RIGHT. THE FILING OF ASSIGNMENT OF ERRORS IN 10 DAYS WAS LATE ALTHOUGH A MOTION TO EXTEND THE TIME WAS FILED BUT NEVER CONSIDERED BY THE COURT. MR. HOLDING, S DUE PROCESS RIGHTS , FAIR TRIAL , EQUAL PROTECTION /OF THE LAWS WERE VIOLATED.

IN THE LOWER COURT OF S.C.C. OF VIRGINIA THIS CASE PROVIDES THIS COURT WITH THE OPPORTUNITY TO ESTABLISH THE CONSTITUTIONALITY OF THE STATE CORPORATION COMMISSION JUDGES WHO RULE ON THE REGULATIONS, EMPLOYEES, REGULATORS, INSPECTORS, EXAMINERS AND ALL MATTER PERTAINING TO S.C.C. IN VIRGINIA. THEY ARE ENVOLVED IN THE OPERATIONS OF THE S.C.C DAILY AND CONSULTED BY SAME. IT IS IMPOSSIBLE FOR THE JUDGES TO GIVE A FAIR, UNBIASED , UNPREJUDICED OPINION OF THEIR OWN DOINGS AND ACTIVITY IN RUNNING S.C.C. THEREFORE IS UNCONSTITUTIONAL AND SHOULD BE CORRECTED. THE 3 JUDGES SHOULD BE INDEPENDANT ~~AND~~

AND SEPARATE OF THE S.C.C. IN THE CASE BEFORE THIS COURT 1 OBSTAINED AND 2 CONFIRMED THE WRONG DECISION . WHICH IS APPEALED. THEREFORE THE COURT SHOULD REVIEW.

IN THE CASE AT BAR A SPEEDY TRIAL WAS NOT PRO VIDED MR. HOLDING FROM NOTICE , THE TEMPORARY INJUNCTION, A PERIOD OF OVER 1 YEAR ELASPED. MR. HOLDING MADE MOTIONS SEVERAL TIMES TO DISMISS THE INJUNCTION AND ACTION. MR. HOLDING WITH 43 YEARS OF OWNER AND MANAGER OF A SECURITIES BROKERA GE FIRM WAS DENIED TO OPERATE HIS BROKERAGE FIRM AND TO EARN A LIVING . WITH THE PERMANENT INJUNCT ION 2 YEARS HAS ELASPED WHICH HAS PREVENTED MR. HOLDING FROM OPERATING HIS FIRM AND TO EARN A LIV ING. THEREFORE THE 6th AMENDMENT OF SPEEDY TRIAL AND DUE PROCESS WERE VIOLATED. THE COURT SHOULD REVIEW THIS .

CONSIDERING THE ORDER OF SCC AUGUST 9,1990 of PERMANENT INJUNCTION WHICH BARS MR. HOLDING FROM PRACTISING HIS PROFESSION OF 43 YEARS IN VIRGINIA , BUT ALSO IN THE ENTIRE COUNTRY. THE THE SECURITIES AND EXCHANGE COMMISSION IN WASH INGTON , D.C. HAS IN MARCH 29, 1991 GRANTED REG ISTRATION TO MR. HOLDING AND HIS FIRM CLARENCE HOUSTON HOLDING PURSUANT TO SEC 15 b OF THE SEC ACTON 2/14/91.

THE PERMANENT INJUNCTION OF VIRGINIA THOUGH

STILL IN EFFECT UNTIL THE INJUNCTION IN VIRGINIA IS VACATED, MR. HOLDING CANNOT DO BUSINESS ANY WHERE. THIS PREVENTS MR. HOLDING FROM ~~PRCTING~~ PRACTISING HIS PROFESSION AND DOING BUSINES AND PREVENTS HIM FROM EARNING A LIVING. THE PERMANENT INJUNCTION NEARLY OVER 2 YEARS OLD WITH THE TEMPORARY, VIOLATES MR. HOLD ING, S CONSTITUTIONAL RIGHTS OF DUE PROCESS AND THE RIGHT TO HIS PROFESSIONAL WORK , AND THE RIGHT TO EARN A LIVING . THE COURT SHOULD REVIEW THIS IN- JUSTICE. I THINK IT SHOUDD BE VACATED .

THE CASE GIVES THIS COURT AN OPPORTUNITY TO REVIEW THE SCC RULING WHICH VIOLATED THE 5th AMEN MENT RIGHT TO KNOW THE ACCUSERS WHERE MR. HOLDING WAS DENIED, SO HE COULD ALSO DEPOSE THEM FOR HIS DEFENSE AND VIOLATED THE DUE PROCESS RIGHTS IN NOT PROVIDING THE SAME. THIS COURT SHOULD REVIEW THIS.

THIS COURT SHOULD REVIEW , A VERY SACRED RIGHT . LEWIS BROTHERS/DIRECTOR, MAX SIEGLER/ENFORCEMENT C. EXAMINER JOHN W. PAR THUM/ CO-CONSPIRATORS AND ALSO CONSPIRATORS HAD MR. HOLDING ARRESTED ON A FELONY EMBEZZLEMENT CHARGE WHICH MR. HOLDING WAS INNOCENT. JUDGE HYDE OF ESSEX GENERAL DISTRICT COURT RULED ON JANUARY 11, 1990 NOT GUILTY . THIS HEINOUS ACT OF S.C.C. VIOLATED EVERY CONSTITUTIONAL RIGHT

IN THE CONSTITUTION , PLUS DUE PROCESS. THE ACT IONS OF S.C.C. HAS CAUSED MR. HOLDING , GREAT HUMILIATION , EMBARRASSMENT, SUFFERING , PERMANENT DAMAGES, AND IRREPARABLE INJURIES WHICH ARE LIFE TIME INJURIES, WHEN MR. HOLDING HAS AN IMPECCABLE RECORD OF INTEGRITY , CHARACTER , HONOR, PERSONAL ITY GOOD LIFE FOR ALMOST 71 YEARS WITH NO COMPLA INTS OR CHARGES AGAINST HIM . THIS DEFINITELY SHOULD BE REVIEWED BY THIS COURT. PROPER ACTION SHOULD BE TAKEN TO CORRECT THIS AND SO MR. HOLDING NOR ANY OTHER PERSON BE SUBJECTED TO THIS INJUSTICE. INTEGRITY, HONOR , CHARACTER IS ALL ANY PERSON HAS , AND WHEN DESTROYED OR DAMAGED YOU HAVE ABSOLUELY NOTHING LEFT .

MR. HOLDING IS WELL EDUCATED WITH A DEGREE IN HISTORY, GOVERNMENT , LAW, GRADUATE DEGREES IN ECONOMICS, INVESTMENTS, SECURITY ANALYSIS, FINANCE, FINANCIAL PLANNING, TRADING ON NEW YORK STOCK EXCHANGE., ASSOCIATE MEMBER OF NYSE.

YES, THERE ARE MANY TRUE REASONS AS SHOWN AND OTHERS NOT MENTIONED FOR GOOD CAUSES SHOWN AND TO ATTAIN THE END TO FAIR , DECENT , TRUE JUSTICE , A WRIT OF CETIORARI SHOULD BE ISSUED TO REVIEW .

## CONCLUSIONS

THIS CASE PRESENTS IMPORTANT NECESSARY CONST

ITUTIONAL ISSUES AND RIGHTS REGARDING THE INDIVID UAL, THE CORPORATION GUARANTEED BY THE CONSTITUTION AND DESERVES THE ATTENTION AND HELP OF THE COURT. THIS COURT HAS THE OPPORTUNITY TO ESTABLISH AND CLARIFY THE BOUNDARIES, LAWS, REGULATIONS OF SACRED RIGHTS GUARANTEED BY THE 5th, 6th, 8th, 14th AMENDM ENTS OF THE UNITED STATES CONSTITUTION, AND IT IS WRITTEN THIS COURT HAS THE JURISDICTION, POWER TO REGULATE , PROTECT AND GUIDE THE INALIENABLE RIGHTS OF LIFE, PROPERTY, LIBERTY , AND THE PURSUIT OF HAPPINESS , DUE PROCESS, SO DEAR TO ALL OF US IN SOCIETY AND CIVILIZATION .

WHEREFORE, FOR ALL GOOD WORTHY, TRUTHFUL CAUSES SHOWN ABOVE AND TO ATTAIN THE ENDS OF TRUE ADMIRABLE PERMANENT JUSTICE THE APPELLANT PRAYS WITH ALL SINCERITY A WRIT WILL BE ISSUED AND JUDGMENT, SO JUSTICE CAN AND WILL PREVAIL .

Clarence Houston Holding

RESPECTFULLY SUBMITTED ,

Clarence Houston Holding

CLARENCE HOUSTON HOLDING
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MOUNT PLEASANTPLANTATION
HAGUE , VIRGINIA 22469
804 472 2026

CLARENCE HOUSTON HOLDING

COUNSEL FOR APPELLANT

COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I CERTIFY I SENT POSTAGE PAID 3 COPIES OF PETITION FOR WRIT ON 7/18/91. POSTAGE PAID .

Clarence Houston Holding

CLARENCE HOUSTON HOLDING

13.

COUNSEL FOR APPELLANT.

V I R G I N I A

IN THE SUPREME COURT AT RICHMOND

CLARENCE H. HOLDING, dba CLARENCE H. HOLDING & COMPANY, APPELLANT,

RECORD NO902632

V. SCC SEC 890180

SECURITIES DIVISION, SCC OF VIRGINIA, APPELLEE.

NOTICE OF APPEAL

COMES NOW CLARENCE H. HOLDING ,dba CLARENCE H. HOLDING & COMPANY , PURSUANT TO RULE 5:41 OF SUPREME COURT AND AMENDMENTS DOTH FORTWITH HEREBY GIVES NOTICE OF APPEAL ON THIS 29th APRIL,1991 TO THE UNITED STATES SUPREME COURT IN WASHINGTON , D.C. FROM AN ORDER DATED 19th APRIL 1991 ON A PETITION FOR REHEARING TO SET ASIDE AN ORDER RENDERED ON JANUARY 31,1991.

RESPECTFULLY SUBMITTED,

COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I certify I sent postage paid A COPY TO COUNSEL FOR APPELLEE ON APRIL 29th ,1991.

CLARENCE HOUSTON HOLDING ,

COUNSEL FOR APPELLANT

V I R G I N I A

IN THE SUPREME COURT OF VIRGINIA HELD AT THE SUPREME COURT BUILDING IN RICHMOND ON THURSDAY THE 31st day of JANUARY , 1991 .

CLARENCE H. HOLDING, dba CLARENCE H. HOLDING & COMPANY, APPELLANT,

AGAINST RECORD NO. 901632
SCC SEC 890180

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION, APPELLEE.

UPON AN APPEAL OF RIGHT FROM ORDERS ENTERED BY THE SCC ON AUGUST 9,27, 1990.

ON JANUARY 14,1991 CAME THE APPELLEE BY COUNSEL, FILED A MOTION PRAYING THAT THE COURT DISMISS THE APPEAL OF RIGHT IN THIS CASE.

THEREUPON CAME THE APPELLANT IN PROPER PERSON, AND FILED A RESPONSE IN OPPOSITION TO SAID MOTION.

ON CONSIDERATION WHEREOF, THE MOTION TO DISMISS IS GRANTED , AND IT IS ORDERED THAT THE APPEAL OF RIGHT AWARDED IN THIS CASE BE AND THE SAME HEREBY IS DISMISSED . RULE 5:21(i) . ORDER CERTIFIED TO SCC.

A COPY,

TESTE:

DAVID B. BEACH

CLERK .

B

V I R G I N I A:

IN THE SUPREME COURT OF VIRGINIA HELD AT THE SUPREME COURT BUILDING IN RICHMOND ON FRIDAY THE 19th APRIL, 1991.

CLARENCE H. HOLDING, dbaCLARENEE H. HOLDING & COMPANY ,

APPELLANT,

AGAINST RECORD NO. 901632
SCC NO. SEC890180

COMMONWEALTH OF VIRGINIA, EX REL.
STATE CORPORATION COMMISSION, APPELLEE.

UPON A PETITION FOR REHEARING

ON CONSIDERATION OF THE PETITION OF THE APPELLANT TO SET ASIDE THE JUDGMENT RENDERED HEREIN ON THE 31st OF JANUARY ,1991 AND GRANT A REHEARING THEREOF , THE PRAYER OF THE SAID PETITION IS DENIED .

A COPY ,

TESTE :

DAVID B. BEACH

CLERK

COMMONWEALTH OF VIRGINIA, SCC

AT RICHMOND AUGUST 9,1990

COMMONWEALTH OF VIRGINIA , EX REL
STATE CORPORATION COMMISSION

V. CASE NO.SEC 890180

CLARENCE H. HOLDING, dba CLARENCE H. HOLDING
& COMPANY, DEFENDANT.

FINAL ORDER AND JUDGMENT

BY ORDER ENTERED HEREIN ON SEPTEMBER 19,1989 ,CLA-
INDIVIDUALLY,AND dbaCLARENCE H.HOLDING
RENCE H. HOLDING & COMPANY("HOLDING""OR DEFENDANT") WAS TEMPORARILY ENJOINED FROM OFFERING OR SELLING SECURITIES IN VIOLATION OF VIRGINIA CODE SEC 13.1-502 or13.1-504. THE TEMPORARY INJUNCTION WAS ENLARGED BY ORDER DATED12/15/1989. ON APRIL 17,1990, THE COMMISSION ISSUED RULE TO SHOW CAUSE , SCHEDULED A HEARING JUNE 21,1990, AND CONTINUED THE TEMPORARY INJUNCTION. ON DEFENDANT,S MOTION, HEARING DATE WAS CONTINUED TO JULY 31,1990 .AT THE HEARING ,DIVISION OF SECURITIES AND RETAILING WAS REPRESENTED BY ITS COUNSEL AND DEFENDANT APPEARED PRO SE.

THE COMMISSION , BASED UPON EVIDENCE, IS OF OPINION AN D FINDS:

(1) THAT BETWEEN APRIL 1988 AND JUNE 1989, CLARENCE H. HOLDING TRANSACTED BUSINESS IN THE COMMONWEALTH AS A BRO KER DEALER UNDER THE NAME CLARENCE H. HOLDING AND COMPANY

D.

AND, INDIVIDUALLY, TRANSACTED BUSINESS IN COMMONWE ALTH AS AGENT OF CLARENCE H. HOLDING & COMPANY:

(2) CLARENCE H. HOLDING & COMPANY HAS NOT BEEN REGISTERED AS BROKER DEALER UNDER VIRGINIA SECURITIES ACT SINCE 1973.

(3) THAT CLARENCE H. HOLDING IS NOT , AND NEVER HAS BEEN REGISTERED AS AN AGENT UNDER THE ACT .

(4)THAT BETWEEN APRIL 1988 AND JUNE 1989, HOLDING OFFERED AND SOLD IN VIRGINIA SECURITIES IN THE FORM(i) OF SHARES OF PUTNAM GROWTH AND INCOME FD, A MUTUAL FUND WHOSE SHARES WERE REGISTERED UNDER THE VA. SEC. ACT AT THE TIME OF THE OFFERS AND SALES (ii) UNITS OF 3 NUVEEN TAX EXEMPT UNIT TRUST , WHICH WERE REGISTERED UNDER THE ACT AT THE TIME OF THE OFFERS AND SALES.

(5) THAT THE AFORESAID OFFERS AND SALES INVOLVED 15 VIRGINIA RESIDENTS AND FOURTEEN SEPARATE TRANSACTIONS.

(6) THAT CLARENCE H. HOLDING ADMITTED IN HIS RESPONSE THAT HE ENGAGED IN SUCH OFFERS AND SALES WHEN CLARENCE H, HOLDING & COMPANY WAS NOT REGISTERED AS A BROKER DE ALER, AND HE WAS NOT REGISTERED AS AGENT.

(7) THAT IN THE OFFER AND SALE OF SHARES OF PUTNAM FUND TO WILLIAM TURPIN, CLARENCE H. HOLDING OMITTED TO STATE A MATERIAL FACT NECESSARY IN ORDER TO MAKE STATE MENTS MADE , IN LIGHT OF CIRCUMSTATNCES UNDER WHICH

E.

THEY WERE MADE, NOT MISLEADING, SO THAT WILLIAM TRUPIN WAS THEREBY MISLEAD INTO BELIEVING THAT INTEREST AND/OR DIVIDENDS PAID ON A $25,000 INVESTMENT IN PUTNAM FUND WOULD PROVIDE A MONTHLY INCOME OF $450 PER MONTH

(8) THAT THE AFORESAID ACTIVITIES CONSTITUTE ONE (1)VIOLATION OF VA, CODE SEC 13.1-502 AND FOURTEEN VIOLATIONS OF VIRGINIA CODE SEC. 13.1 504.

(9) THAT HOLDING SHOULD BE PERMANENTLY ENJOINED FROM COMMITTING SUCH ACTS IN THE FUTURE AND SHOULD BE PENALIZED $250 FOR HAVING VIOLATED VA. CODE SEC13.1-502 ON ONE OCCASION AND $250 FOR HAVING VIOLATED VA. CODE SEC 13.1-504 ON FOURTEEN OCCASIONS;IT IS , THEREFORE ORDERED:

(1) THAT PURSUANT TP VA. CODE SEC13.1 -519, THE TEMPORARY INJUNCTION ENTERED AGAINST HOLDING ENJOINING HIM FROM DIRECTLY OR INDIRECTLY OFFERING OR SELLING ANY SECURITIES IN VIOLATION OF VA. CODE SEC 13.1-502 OR13.1-504 BE, AND IT HEREBY IS MADE PERMANENT :

(2) THAT PURSUANT TO VA. CODE 13.1-521, HOLDING BE, PENALIZED $250 FOR HAVING VIOLATED VA CODE SEC 13.1-502 ON ONE OCCASION AND $250 FOR HAVING VIOLATED VA. CODE 13.1-504 ON 14 OCCASIONS , FOR A TOTAL OF $500 AND THE COMMONWEALTH RECOVER SAID AMOUNT:

(3) THERE APPEARS NOTHING FURTHER TO BE DONE IN THIS PROCEEDING , THIS CASE CAN BE DISMISSED FROM THE DOCKET AND THE PAPERS PLACED IN THE FILE FOR ENDED CAUSES .

ATTESTED COPIES SHALL BE SENT BY REGULAR AND CERTIFIED MAIL RETURN RECEIPT , TO CLARENCE H. HOLDING ROUTE 1 BOX 2 , HAGUE , VA. 22469.

A TRUE COPY

TESTE: GEORGE W. BRYANT ,JR.

CLK SCC.

G.

Supreme Court, U.S.
FILED
AUG 19 1991
OFFICE OF THE CLERK

(2)

NO. 91-149

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

CLARENCE H. HOLDING, Individually, and d/b/a CLARENCE H. HOLDING AND COMPANY,
Petitioner,

v.

STATE CORPORATION COMMISSION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

# BRIEF IN OPPOSITION

Joel H. Peck
Senior Counsel
**(Counsel of Record)**
Judith Williams Jagdmann
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## QUESTION PRESENTED

Was Petitioner deprived of the due process of law guaranteed by the fourteenth amendment of the United States Constitution when the Supreme Court of Virginia dismissed Petitioner's appeal of right for his failure to comply with a mandatory rule of the Virginia Court?

TABLE OF CONTENTS


| | Page |
|---|---|
| Question Presented . . . . . | i |
| Table of Authorities . . . . . | iii |
| Opinion Below . . . . . | 2 |
| Constitutional Provision Involved . | 2 |
| Statement of the Case . . . . . | 3 |
| Summary of Argument . . . . . | 13 |
| Argument . . . . . | 14 |
| Conclusion . . . . . | 20 |
| Certificate of Service . . . . . | 20 |
| Appendix . . . . . | A-1 |

TABLE OF AUTHORITIES


| | Page |
|---|---|
| **Cases:** | |
| Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982) . . . . . | 16 |
| Skeens v. Commonwealth, 192 Va. 200, 64 S.E.2d 764 (1951). . | 15 |
| Thomas v. Arn, 474 U.S. 140 (1985) . . . . . | 16 |
| Towler v. Commonwealth, 216 Va. 533, 221 S.E.2d 119 (1976) . . . . . | 15 |
| Winchester & Strausburg R.R. Co. v. Commonwealth, 106 Va. 264, 55 S.E. 692 (1906) . . . . . | 19 |
| Withrow v. Larkin, 421 U.S. 35 (1975) . . . . . | 19 |
| **Constitutions:** | |
| U.S. Const. amend. XIV . . . . . | i, 2 |
| Va. Const. art. IX . . . . . | 3 |
| Va. Const. art. IX, § 4 . . . . . | 9 |

Page

Statutes:

Va. Code § 12.1-39 . . . . . 9

Va. Code §§ 13.1-501 - 13.1-527.3. . 3

Va. Code § 13.1-502 . . . . . 4, 8

Va. Code § 13.1-504 . . . . . 4, 8, 18

Va. Code § 13.1-519 . . . . . 3, 8, 18

Va. Code § 13.1-521 . . . . . 6, 8

Rules:

U.S. Sup. Ct. Rule 10.1 . . . . . 13

Va. S. Ct. Rule 5:5(b) . . . . . 17

Va. S. Ct. Rule 5:21(i) . . . . . 10, 15

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---

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF VIRGINIA

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# BRIEF IN OPPOSITION

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## OPINION BELOW

The January 31, 1991, order dismissing Petitioner's appeal is not (and will not be) reported. The text of the order is set forth on pages A-1 - A-2 of the Appendix attached hereto.

## CONSTITUTIONAL PROVISION INVOLVED

Amendment XIV, § 1 of the Constitution of the United States of America:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## STATEMENT OF THE CASE

On September 19, 1989, the State Corporation Commission[1] ("Commission" or "SCC"), pursuant to Va. Code § 13.1-519 (1989), issued a ninety-day temporary injunction against Petitioner, individually, and doing business as Clarence H. Holding and Company, enjoining him from violating the broker-dealer and agent registration provisions and the anti-fraud provisions of the Virginia Securities Act (Va. Code §§ 13.1-501 - 13.1-527.3 (1989 & Supp. 1991)) (further references to sections of the Securities

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[1]Petitioner has designated Respondent as "Securities Division, SCC of Virginia." It is submitted that the appropriate Respondent is the "State Corporation Commission," a constitutionally created department of government of the Commonwealth of Virginia. Va. Const. art. IX.

Act will exclude the phrase "Va. Code").[2] The temporary injunction was entered at the request of the SCC's Division of Securities and Retail Franchising ("Division"), which filed a motion for such relief, and mailed a copy thereof to Petitioner, on September 8, 1989. The factual basis in support of the motion was provided in the affidavit of John W. Parthum, a Senior Securities Investigator in the Division, which was appended to the motion. Holding failed to appear at the September 19 hearing on the motion, but filed on September 20 a single document that responded to the motion and moved "to dismiss the motion for temporary injunction." The motion to dismiss was

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[2]The broker-dealer and agent registration requirements are contained in § 13.1-504 A (Supp. 1991). The anti-fraud provisions are set forth in § 13.1-502 (1989).

denied by order of October 11, 1989. On a subsequent motion of the Division, and after a hearing at which Petitioner represented himself, the injunction was extended until April 18, 1990, by order dated December 15, 1989.[3]

On October 10, 1989, Petitioner submitted a request that he be given copies of all documents and information in the possession of the Commission pertaining to the Division's investigation of his activities. By letter dated October 19, staff counsel advised Petitioner that he would have an opportunity to review the nonprivileged part of the Division's file if,

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[3]At the conclusion of this hearing, the Commission "strongly" suggested to Holding that he consult with an attorney. Holding, however, continued to appear pro se throughout the course of the Commission proceedings and represented himself in his appeal to the Supreme Court of Virginia.

after completion of the investigation, a formal Commission proceeding seeking imposition of some type of permanent sanction against him was instituted.

On April 17, 1990, the Commission, pursuant to § 13.1-521 (Supp. 1991), instituted a civil proceeding against Holding, individually, and d/b/a Clarence H. Holding and Company, by the issuance of a Rule to Show Cause. The Rule continued in effect the temporary injunction and notified Petitioner of his alleged unlawful conduct; of the Division's intention to ask the Commission to make permanent the temporary injunction and to impose a monetary penalty; of the date, time and place of the scheduled hearing; of the deadline for the filing of a pleading in response to the Rule; and, of the fact that he would be deemed in default, and the consequences thereof, if he failed to

timely respond and/or appear at the scheduled hearing.

By order of May 22, 1990, the Commission granted Holding's motion for an extension of the filing and hearing dates. His second request for extension of these dates, filed on July 2, 1990, was granted as to the responsive pleading, but denied as to the hearing. On July 11, 1990, Petitioner filed a request for the names of, and other information about, the witnesses the Division intended to present at the hearing. This data was provided in the Division's "Response to Request for Names of Witnesses" filed on July 18. Petitioner's responsive pleading was filed on July 16,[4] and the case was heard by the Commission

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[4]In Holding's responsive pleading, he admitted that in fourteen transactions he sold securities as an unregistered broker-dealer and agent.

on July 31, 1990. The evidence received during the four hour hearing consisted of the testimony of four witnesses called by the Division (each of whom was cross-examined by Holding), the testimony of Petitioner (who testified on his own behalf), and twenty-two exhibits.

The Commission issued its Final Order and Judgment on August 9, 1990. Among other things, it found that Holding had violated § 13.1-502 (the anti-fraud provisions) in one transaction and § 13.1-504 (the requirements to be registered as a broker-dealer and an agent) in fourteen transactions. As a consequence, Petitioner, pursuant to § 13.1-519, was permanently enjoined from violating these statutory provisions and, pursuant to § 13.1-521, was penalized in the total amount of $500, $250 for having violated § 13.1-502 and $250 for having violated § 13.1-504.

In accordance with the Rules of Practice and Procedure of the SCC, Holding filed a Petition for Rehearing or Reconsideration on August 21, 1990. The relief was denied by order dated August 27, which stated "that the grounds set forth in the Petition in support of the relief requested are without merit[.]"

Petitioner exercised his right of appeal and timely filed a Notice of Appeal to the Virginia Supreme Court indicating that he was appealing from the Commission's orders of August 9 and 27, 1990.[5] On January 14, 1991, the SCC filed a motion to dismiss the appeal, in which

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[5]The Constitution and statutes of the Commonwealth provide that any party aggrieved by a final order or judgment of the Commission has an appeal of right to the Supreme Court of Virginia irrespective of the amount involved. Va. Const. art. IX, § 4; Va. Code § 12.1-39 (1989).

it asserted that Holding had violated the Virginia Court's rules by failing to timely file assignments of error, an appeal bond and his designation of the parts of the record to be included in the appendix. Citing its rule concerning the filing of assignments of error (Va. S. Ct. Rule 5:21(i); the text of this Rule is set out on pages A-3 - A-11 of the Appendix attached hereto), the Virginia Court dismissed the appeal by order dated January 31, 1991. Holding's request for a rehearing on the judgment dismissing the appeal was denied by the Court on April 19, 1991.

Other facts and assertions contained in the "Facts of the Case" portion of the petition (Pet. 4-8) require amplification, to wit:

The second full paragraph on page 5 declares that Mr. Parthum "by affidavit

falsely made allegations" concerning Holding. There is no evidence of record which supports this conclusion. To the contrary, the "allegations" that are being assailed were established by the evidence, as the Commission found in its Final Order and Judgment.

The paragraph beginning at the top of page 7 accuses Mr. Parthum and two other employees of the Division of being "co-conspirators in the false arrest and allegations" in connection with the Commonwealth's Attorney of Essex County, Virginia apparently having Holding arrested "for embezzlement of $10,000 from Madeline Watts." The transcript of the July 31 hearing contains testimony from Mrs. Watts about this incident. This is the only evidence of record pertaining to the embezzlement matter (a criminal matter

separate from and independent of the SCC proceeding), and it is devoid of any reference to the employees identified in the petition, to a conspiracy, or to the "false" arrest of Petitioner.

The text on page 8 refers to Holding's customers having "made handsome profits" and not having "lost any money" while a customer, to his flawless integrity, character, etc., and to his educational background. None of these areas was an issue in the proceeding below, and the record, including Petitioner's testimony, does not support any of these assertions. Also on page 8 is a reference to character "Affidavits of clients" being "in the file." No such documents were either offered or received in evidence. The Commission assumes the reference is to the two affidavits appended to Holding's Petition for Appeal filed with the Supreme Court of

Virginia in December 1990 and included in the Appendix he prepared and filed with that Court in January 1991. The Commission moved the Court to exclude from the Appendix these affidavits as well as twelve other documents which Holding designated for inclusion, but which were not part of the record developed before the Commission.

## SUMMARY OF ARGUMENT

Holding's petition should be denied for the simple reason that it fails to meet the "special and important reasons" standard enunciated in Rule 10.1 of the Rules of this Court. Contrary to the statement of jurisdiction set forth on pages 1 and 2 of the petition, this matter does not involve (a) a decision, or any other action, by a United States court of appeals, (b) a decision on a federal question by the Supreme Court of Virginia that conflicts with a

decision rendered by another state court of last resort or a United States court of appeals, or (c) "an important question of federal law" that should be decided by this Court or that was decided below in a manner which conflicts with applicable law established by this Court. Petitioner has failed to cite or otherwise meaningfully identify any decision of any tribunal that is in conflict with the decisions rendered below. Holding's due process guarantees were fully vindicated below, and his petition raises no other federal question of any significance.

## ARGUMENT

The only question properly before the Court is whether Petitioner was denied due process of law by the Virginia Supreme Court's dismissal of his appeal. By virtue of the dismissal, none of the other

questions raised by Holding about the Commission's procedures was reviewed by the Virginia Court. In any event, none of the arguments advanced by Petitioner about the Commission's procedures has any merit.

The procedures that governed Holding's appeal from the Commission's decision of August 9, 1990 are clear. Rule 5:21(i) of the Virginia Supreme Court provides, in relevant part, that an appellant shall file assignments of error "[w]ithin 10 days after the issuance by the clerk of this Court of his certificate [granting the appeal]. . . ." The time limit imposed by this Rule is mandatory, and failure to file within the prescribed time is grounds for dismissal of an appeal. Skeens v. Commonwealth, 192 Va. 200, 202-03, 64 S.E.2d 764 (1951); see also Towler v. Commonwealth, 216 Va. 533, 535, 221 S.E.2d 119 (1976) (dismissal is

the price of failure to comply with the Virginia Supreme Court's mandatory rules provisions).

This Court has long held that dismissal may be an appropriate sanction for failure to comply with reasonable procedural rules. In Thomas v. Arn, 474 U.S. 140, 155 (1985), the Court summarized the principle.

> We recently reiterated our long-standing maxim that 'the State certainly accords due process when it terminates a claim for failure to comply with a reasonable procedural or evidentiary rule.' Logan v. Zimmerman Brush Co. 455 U.S. 422, 437, 71 L.Ed. 2d 265, 102 S.Ct. 1148 (1982). The same rationale applies to the forfeiture of an appeal. . . .

The 10-day rule is a reasonable requirement because the granting of an appeal from a final order of the SCC is required by Virginia law (see supra note 5). Thus, Petitioner could have prepared his assignments of error in

September 1990, soon after he submitted the Notice of Appeal, and filed them in December by mail (Va. S. Ct. Rule 5:5(b)).

Petitioner concedes that he did not file assignments of error within the time prescribed by the Virginia Supreme Court's rules (Pet. 9).[6] Therefore, dismissal of Holding's appeal was appropriate and not violative of due process.

As stated in the Commission's order of August 9, 1990, Holding was assessed two penalties of $250 each. One assessment was

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[6]Holding submits various excuses for his failure to file, including health and automobile breakdown. Similar excuses were used numerous times throughout the Commission proceedings and Petitioner states that his health problem has endured for 35 years (Pet. 4). Petitioner's excuses are not unique to the period within which assignments of error should have been filed and are unpersuasive for that reason.

for failure to register as a broker-dealer and agent under § 13.1-504, a violation he admits (Pet. 5). The other was for employing misleading statements in the sale of a security, a decision of the Commission based on the evidence of record after notice to Holding and an evidentiary hearing in which he participated. Petitioner was also enjoined from further violation of the law as authorized by § 13.1-519.[7] There is no question of federal law raised by any of these Commission decisions and Holding's

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[7]Holding was never enjoined from operating a business in Virginia; he was only enjoined to operate it according to law.

procedural rights under the Constitution were fully protected.[8]

In sum, the only issue before this Court is whether Holding's due process rights were abridged when the Virginia Supreme Court dismissed his appeal for failure to meet procedural requirements. Such rights were not denied, and dismissal by the Virginia Supreme Court was entirely proper.

---

[8]Holding also argues that the structure of the Commission violates his due process because one agency possesses judicial, executive and legislative powers. The constitutionality of the SCC's structure was decided long ago. Winchester & Strausburg R.R. Co. v. Commonwealth, 106 Va. 264, 267-74, 55 S.E. 692 (1906). See Withrow v. Larkin, 421 U.S. 35, 56 (1975) (due process is not violated merely because the same members of an administrative agency are associated with the agency's investigative and adjudicative functions).

## CONCLUSION

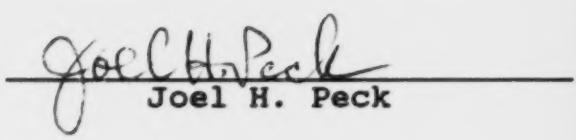
The Petition should be denied.

Respectfully submitted,

Joel H. Peck
Senior Counsel
**(Counsel of Record)**
Judith Williams Jagdmann
Assistant General Counsel

## CERTIFICATE OF SERVICE

I hereby certify that on August 19, 1991, three copies of the foregoing Brief in Opposition were mailed by first class mail, postage prepaid to Clarence H. Holding, Route 1, Box 2, Mount Pleasant Plantation, Hague, Virginia 22469.



Joel H. Peck

# APPENDIX

**VIRGINIA:**

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 31st day of January, 1991.

Clarence H. Holding, Individually and d/b/a Clarence H. Holding & Company, Appellant,

against Record No. 901632
S.C.C. Case No. SEC890180

Commonwealth of Virginia, ex rel. State Corporation Commission, Appellee.

Upon an appeal of right from orders entered by the State Corporation Commission on August 9 and August 27, 1990.

On January 14, 1991 came the appellee, by counsel, and filed a motion praying that the Court dismiss the appeal of right in this case.

Thereupon came the appellant, in proper person, and filed a response in opposition to said motion.

On consideration whereof, the motion to dismiss is granted, and it is ordered that the appeal of right heretofore awarded in this case be and the same hereby is dismissed. Rule 5:21(i).

This order shall be certified to the State Corporation Commission.

A Copy,

Teste:

/s/ David Beach

Clerk

F. SPECIAL RULES.

**Rule 5:21. Special Rules Applicable to Appeals from the State Corporation Commission.**

(a) Applicability. - This Rule applies to all appeals from the State Corporation Commission and supersedes all other Rules except as otherwise specified herein.

(b) Party. - For the purposes of this Rule, the Commission, the Attorney General, the applicant or petitioner, and every person who made an appearance in person in a capacity other than as a witness or by counsel at any hearing in any proceeding before the Commission shall be the parties to such proceeding. Upon the request of any party, the clerk of the Commission shall prepare and certify a list of all parties (including their

addresses and the names and addresses of their counsel) to a proceeding before the Commission. Initially, the parties to an appeal from an order in a proceeding shall be the parties to that proceeding, but the number of parties to an appeal may thereafter be limited as hereinafter provided. Service upon a party represented by counsel shall be made upon his counsel.

(c) Notice of Appeal. - No appeal from an order of the Commission shall be allowed unless, within 30 days after entry of the order appealed from, counsel files in the office of the clerk of the Commission a notice of appeal, a copy of which has been mailed or delivered to each party to the appeal and appended to which is either an acceptance of such service or a certificate showing the date of delivery

or mailing. All appeals from the same order shall be deemed to be a single consolidated case in this Court unless this Court shall order a severance for convenience of hearing.

(d) Record. - The clerk of the Commission shall prepare and certify the record as soon as possible after the notice of appeal is filed and shall, as soon as it has been certified by him, transmit it to the clerk of this Court within 4 months after entry of the order appealed from. In the event of multiple appeals in the same case or in cases tried together below, only one record need be prepared and transmitted.

(e) Contents of Record. - The record on appeal from the Commission shall consist of all notices of appeal, any application or petition, all orders

entered in the case by the Commission, the opinions, the transcript of any testimony received, and all exhibits accepted or rejected, together with such other material as may be certified by the clerk of the Commission to be a part of the record. The record shall conform as nearly as practicable to the requirements of Rule 5:10.

(f) Alignment of Parties. - Within 21 days after the notice of appeal shall have been filed in the office of the clerk of the Commission, each party who has not filed a notice of appeal and who intends to participate in the appeal shall file in the office of the clerk of the Commission and shall mail to every other party a notice that he intends to participate as an appellant or as an appellee. Every party who seeks reversal or modification

of the order appealed from shall be deemed an appellant, and every party who seeks affirmance of the order appealed from shall be deemed an appellee. Every party who does not file such a notice and every party who, having filed such a notice as an appellant, does not thereafter file a petition for appeal shall be deemed no longer to be a party to the appeal, and no further papers need be served on him. Notwithstanding the foregoing provisions, (1) a necessary party who does not file such a notice or petition for appeal shall be deemed an appellee, and (2) the Commission need not file such a notice and shall be deemed an appellee.

(g) Petition for Appeal. - The petition(s) for appeal shall be filed in the office of the clerk of this Court within 4 months after entry of the final

order, judgment or finding by the Commission. Each party deemed to be an appellant shall file a petition for appeal and shall, before the petition is filed, mail or deliver a copy to every other party to the appeal. Except as provided herein, the provisions of Rule 5:17 do not apply to a petition filed pursuant to this paragraph. The petition for appeal need only identify the order appealed from, with its date, contain a prayer that the appeal be granted, and include the certificate required by Rule 5:17(d)(1), (2) and (4). Oral argument on the petition shall not be allowed nor will a brief in opposition be received. If the petition prays for a suspension of the effectiveness of the order appealed from, it shall contain such statements of the facts and argument as shall be necessary

for an understanding of the question presented. In that event, a brief in opposition will be received and oral argument may be granted.

(h) Award of Appeal. - When the notice of appeal, the record, and the petition(s) for appeal appear to have been filed in the manner provided herein and within the time provided herein and by law, the clerk of this Court shall forthwith enter an order granting the appeal, requiring such bond as he shall deem proper. His action shall be subject to review by this Court.

(i) Assignments of Error. - Within 10 days after the issuance by the clerk of this Court of his certificate pursuant to Rule 5:23, each party appellant shall file assignments of error in the office of the clerk of this Court and mail a copy

thereof to every other party to the appeal. Only errors so assigned will be noticed by this Court and no error not so assigned will be admitted as the ground for reversal of the decision below. Error will not be sustained to any ruling by the Commission unless the objection was stated with reasonable certainty at the time of the ruling, except for good cause shown or to enable this Court to attain the ends of justice. An assignment of error which merely states that the judgment in contrary to the law and the evidence is not sufficient.

(j) Further Proceedings. - Further proceedings in this Court shall conform to Rules 5:23 through 5:40 provided that (i) the time within which the appellee may file with the clerk of this Court a designation of the additional parts of the

record that he wishes included in the appendix (Rule 5:32(d)) shall be extended to 30 days after the date of the certificate of the clerk of this Court pursuant to Rule 5:23 an appeal has been awarded; and (ii) the time within which the opening brief of the appellant shall be filed in the office of the clerk of this Court shall be extended to 50 days after such date.

(k) Additional Brief. - An appellant who seeks relief different from that sought by another appellant may file an answering brief at the time prescribed for filing the brief of appellee.